

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD M. SMITH,

Plaintiff,

CIVIL ACTION NO. 06-CV-12402-DT

vs.

DISTRICT JUDGE LAWRENCE P. ZATKOFF

KELVIN SIMOWSIK, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

_____/

**ORDER HOLDING IN ABEYANCE PLAINTIFF'S MOTION TO COMPEL
DISCLOSURE OR DISCOVERY**

This matter comes before the Court on Plaintiff's Motion for Order to Compel Disclosure or Discovery filed on November 29, 2006. (Docket no. 23). Defendants have not responded to the motion. All pretrial matters have been referred to the undersigned by Judge Zatkoff. (Docket no. 13). The matter is now ready for ruling under 28 U.S.C. § 636(b)(1)(A).

This is a civil rights action filed by a state prisoner. In addition to Plaintiff's pending discovery motion, Defendants Adams and Peterson filed a motion to dismiss on December 6, 2006 which is now pending. (Docket no. 25). Plaintiff has not responded to that motion, and his time for filing a response has now expired. If Defendants' motion to dismiss is granted, it would moot Plaintiff's discovery motion. The motion to dismiss tests the legal sufficiency of Plaintiff's Complaint and, specifically, is based on the argument that the applicable statutes of limitation bar Plaintiff's claims. Factual discovery is therefore not relevant to the merits of that motion. Because Plaintiff may have refrained from responding to Defendants' motion to dismiss due to his pending discovery motion, the Court will grant Plaintiff an extension of time to file a response to Defendants' motion to dismiss. Plaintiff is warned

that if he fails to file a brief in response during this period of time, Defendants' motion may be considered unopposed and Plaintiff's action could be dismissed without further notice.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Order to Compel Disclosure or Discovery (docket no. 23) be **HELD IN ABEYANCE** pending a ruling on Defendants' Motion to Dismiss. Plaintiff is granted an extension of time to respond to Defendants' Motion to Dismiss up to and including March 16, 2007.

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: February 27, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Donald M. Smith and Counsel of Record on this date.

Dated: February 27, 2007

s/ Lisa C. Bartlett
Courtroom Deputy